

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE KARVELIS,

Defendant-Appellant.

UNPUBLISHED
December 16, 2010

No. 294635
Wayne Circuit Court
LC No. 06-002379-FC

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right a judgment of sentence entered after a remand from this Court. We find that the judgment was improperly entered, but we conclude that defendant has not established that he is entitled to relief and, because the judgment contains the correction previously ordered, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under 13 years of age), and three counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (victim under 13 years of age). Defendant was sentenced as a second habitual offender, MCL 769.10, to prison terms of 15 to 30 years for CSC I and 15 to 22-1/2 years for CSC II.

In his initial appeal, defendant challenged both his convictions and sentences. In *People v Karvelis*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2009 (Docket No. 282485), this Court vacated one CSC I conviction after finding that it was unclear whether the incident that formed the basis for the third CSC I charge occurred when the victim was under 13 year of age. *Karvelis*, unpub op at 2. However, this Court affirmed the remainder of defendant's convictions. Defendant claimed he was entitled to resentencing due to errors in the scoring of offense variables (OVs) 8 and 11. This Court agreed with defendant's challenge to OV 8, but found that defendant had waived his challenge to OV 11. *Id.* at 5. This Court further found that, despite the fact that the scoring error resulted in a change to the proper guideline range, resentencing was not warranted because the sentence imposed fell within the correct range and "the record establishes the trial court's intent to sentence the defendant as it did." *Id.* Noting that the trial court had erroneously indicated on the judgment of sentence that the sentence for one CSC I conviction was 15 to 22-1/2 years in prison and the sentence for one

CSC II conviction was 15 to 30 years in prison, this Court remanded the case “for ministerial correction of the judgment of sentence.” *Id.* at 6.

The limited scope of this Court’s remand notwithstanding, the trial court held a resentencing hearing. The trial court subtracted 15 points from defendant’s OV score pursuant to this Court’s opinion. The trial court also made minor modifications to the presentence investigation report. The trial court denied defendant’s motion to change the scoring of OV 11. The trial court re-imposed the same sentences.

Defendant now argues that the trial court erred when it failed to offer him the chance to allocute during resentencing, as provided in MCR 6.425(E)(1)(c). He contends that because the trial court failed to provide him a reasonable opportunity to allocute, this Court must reverse and remand for resentencing. We disagree.

Neither defendant nor defense counsel objected to the alleged lack of an opportunity to allocate during the resentencing proceeding. This issue is not preserved. *People v Jones (On Rehearing)*, 201 Mich App 449, 452; 506 NW2d 542 (1993). This unpreserved assertion of error is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant is not entitled to relief. Once a sentence has been imposed, the trial court’s ability to alter that sentence is severely limited. *People v Councell*, 194 Mich App 192, 193-194; 486 NW2d 350 (1992). MCR 6.429(A) provides that a court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law. *People v Moore*, 468 Mich 573, 579; 664 NW2d 700 (2003); *People v Wybrecht*, 222 Mich App 160, 166-167; 564 NW2d 903 (1997). ““Invalid sentence” refers to an error or defect in the sentence or sentencing procedure that entitles a defendant to resentencing or to have the sentence changed.” *Councell*, 194 Mich App at 194.

This Court’s initial opinion did not remand this case to the trial court for resentencing. It instead affirmed all but one of defendant’s convictions, and specifically affirmed defendant’s sentences. The trial court was directed to correct the ministerial error in the judgment of sentence only, and thus was not authorized to resentence defendant. However, because the sentences imposed were the same as the initial sentences, the trial court’s error was not outcome-determinative.

Moreover we note that defendant’s ability to challenge the trial court’s actions is prescribed by the scope of the remand. An appeal by right following a remand is limited to issues arising from the remand. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975); see also *People v Kincade (On Remand)*, 206 Mich App 477, 481; 522 NW2d 880 (1994). Defendant’s claim of error falls outside the remand order.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens